

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

Horizon Christian Fellowship, a nonprofit religious corporation; George Small; Swansea Abundant Life Assembly of God, a nonprofit religious corporation; David Aucoin; House of Destiny Ministries, a nonprofit religious corporation; Esteban Carrasco; Faith Christian Fellowship of Haverhill, a nonprofit religious corporation; and Marlene Yeo;)	
Plaintiffs,)	Case No. _____
)	
v.)	
Jamie R. Williamson, Sunila T. George, and Charlotte G. Richie, each in her official capacity as a Commissioner of the Massachusetts Commission Against Discrimination; and Maura Healey, in her official capacity as the Attorney General of the State of Massachusetts;)	
Defendants.)	
)	

**Verified Complaint for
Declaratory and Injunctive Relief**

INTRODUCTION

1. This is a civil rights action to stop the Commissioners of the Massachusetts Commission Against Discrimination (“MCAD”) and the Massachusetts Attorney General from punishing four Massachusetts churches and their pastors because they wish to communicate their religious beliefs regarding human sexuality and use their buildings in a manner consistent with their religious beliefs.

2. In July 2016, the Massachusetts Legislature enacted S.B. 2407, which added “gender identity” as a protected class to the public accommodation laws (Massachusetts General

Laws chapter 272 § 92A and § 98, hereinafter, “Act”) and directed MCAD and the Attorney General to issue regulations or guidance by September 1, 2016, to effectuate the new law.

3. On that date, MCAD issued its “Gender Identity Guidance,” which states that “a church could be seen as a place of public accommodation if it holds a secular event, such as a spaghetti supper, that is open to the public.”¹

4. The Attorney General also issued its “Gender Identity Guidance for Public Accommodation”² and stated on its website that “houses of worship” are places of public accommodation.

5. MCAD and the Attorney General interpret Massachusetts’s public accommodation laws, as amended by S.B. 2407, to force churches to allow individuals access to church changing rooms, shower facilities, and restrooms based on their gender identity, and not their biological sex, in violation of the churches’ religious beliefs.

6. Because the public accommodations laws also prohibit covered entities from making statements intended “to discriminate” or to “incite[]” others to do so, MCAD and the Attorney General also intend to force churches and pastors to refrain from religious expression regarding biological sex and gender identity.

7. The Legislature and MCAD failed to provide an exemption for religious institutions, nor did MCAD attempt to define the “secular activities” that it believed might subject a church to the Act, other than the woefully inadequate and confusing “spaghetti supper” test.

¹ Available at <http://www.mass.gov/mcad/docs/gender-identity-guidance.pdf>, last viewed October 10, 2016.

² Available at <http://www.mass.gov/ago/docs/policy/2016/ag-healey-gender-identity-guidance-for-public-accommodations-9-1-16.pdf>, last viewed October 10, 2016.

8. Indeed, MCAD expressly stated that it would not provide an objective standard, but would review a charge “involving religious institutions or religious exemptions ... on a case-by-case-basis.”³ Thus, a pastor, other church leader, or a court must guess as to which of the church’s activities subject it to the severe sanctions of the Act, which include fines of \$50,000 per violation, up to 365 days in jail, and attorneys’ fees.

9. Applying public accommodations laws to churches grossly misunderstands the religious purposes and beliefs of Plaintiffs Horizon Christian Fellowship (“Horizon”), Swansea Abundant Life Assembly of God (“Abundant Life”), House of Destiny Ministries (“Destiny”), and Faith Christian Fellowship of Haverhill (“Faith Christian”), (collectively, “Churches”).

10. The Churches engage in religious expression and practice in every activity they open to the public: during communal worship, other formal religious services, Sunday school classes, Bible studies, youth-oriented activities, offering help from their food pantries, the meals they serve to the homeless at Thanksgiving, Christmas, and during other outreach opportunities, including spaghetti suppers.

11. The Churches welcome the public to all of their activities because they believe that to be faithful followers of Jesus Christ they must invite members of their communities to hear the good news of God’s compassion and forgiveness offered freely to everyone, they should teach those beliefs to the world, and they should be a blessing to all who pass through their doors, just as Jesus Christ, the founder of their faith, extended forgiveness, fed the hungry, and showed compassion to all who came to Him for aid.

³ Available at <http://www.mass.gov/mcad/docs/gender-identity-guidance.pdf>, pg. 5, n.13, *last viewed* October 10, 2016.

12. Even activities the Churches undertake that do not contain overt religious inculcation are religious in nature because they are motivated by the Churches' religious mission and engender other important elements of religious meaning, expression, and purpose, such as mutual encouragement, relationship-building, demonstrating the Churches' interest in the welfare of others, and nurturing spiritual gifts to be used for the benefit of church members and the community.

13. In all the Churches' activities, they are communicating their understanding of God's truth, and refraining from communicating messages that violate the Churches' understanding of God's truth.

14. As a result, there are messages, practices, and activities that the Churches would not sponsor, host, or otherwise communicate because those messages, practices, and activities would violate the Churches' understanding of God's truth.

15. The activities that the Churches allow in their facilities must be consistent with their understanding of God's truth, and must not present a message that contradicts the Churches' understanding of God's truth.

16. The Churches believe and teach that when God created humankind, He made each person as either male or female, and that the two complementary halves of humanity—biological males and biological females—together reflect the image and nature of God.

17. The Churches believe and teach that maleness or femaleness is designed by God and is tied to biology, chromosomes, physiology, and anatomy.

18. The Churches' religious beliefs are that sex is an immutable trait from which springs the natural and healthy desires for physical privacy and modesty in states of partial or full undress, such as in showers, changing rooms and restrooms.

19. The Churches recognize that some individuals do not identify with their biological sex, and the Churches welcome those individuals, want to be a blessing to them, and want to minister to them.

20. The Act prohibits the Churches from making statements that might cause individuals to believe that they will not be permitted access to sex-specific changing rooms, showers, and restrooms.

21. The language of the Act is broad enough to include within that prohibition written sermons, theological expositions, educational presentations, newsletters or church worship bulletin text, or other statements from the Churches, Pastors, and other religious leaders.

22. The Churches desire to preach and post on their websites sermons addressing God's design for human sexuality and the Churches' beliefs about "gender identity," but reasonably fear that if they were to do so they would violate the Act's prohibitions.

23. The Act's prohibitions would also apply to a church bulletin and website that included an explanation that the women's restrooms are reserved for biological females, while the men's restrooms are reserved for biological males.

24. The Act's prohibitions would also apply to Plaintiff George Small of Horizon, Plaintiff David Aucoin of Abundant Life, Plaintiff Esteban Carrasco of Destiny, and Plaintiff Marlene Yeo of Faith Christian (collectively, "Pastors") who frequently speak within and outside their churches to gatherings drawn from the general public. They also are asked to write articles for publications on a variety of religious subjects and speak on the radio and in other venues.

25. The Pastors have spoken and written about their understanding of God's truth concerning the immutability and complementariness of biological sex, and the importance of religious leaders adopting facility use policies consistent with that teaching, and they intend to do

so at future religious meetings in their churches, other houses of worship, meeting halls, auditoriums, and other places MCAD may consider to be public accommodations.

26. The Act is written broadly enough to encompass such oral and written statements by the Pastors and thereby subject them to the penalties of the Act.

27. The Act's prohibitions thus cause the Churches and Pastors to self-censor and chill their speech, while permitting other churches and ministers to freely express beliefs regarding biological sex that are consistent with the Act.

28. This case is also about stopping MCAD and the Attorney General from forcing the Churches to use their facilities in a way that violates their religious beliefs about human sexuality.

29. In light of their religious beliefs, the Churches have always maintained an unwritten policy and actual practice that sex-specific private spaces—including changing facilities, showers, and restrooms—may be used only by members of the designated biological sex.

30. But in light of recent cultural developments, and the passage of S.B. 2407, the Churches felt it necessary to put that unwritten facility policy into writing.

31. Abundant Life and Destiny adopted written changing room, shower and restroom use policies limiting access based on one's biological sex, but the plain reading of the Act prohibits them from publicizing their policies, and subjects them to substantial penalties.

32. Requiring the Churches to allow individuals to use the facilities reserved for the opposite biological sex contradicts the Churches' message about God's intention and purpose for human sexuality.

33. Requiring the Churches to allow individuals to use the facilities reserved for the opposite sex forces the Churches to speak a message that they do not want to speak; namely, that

sex is fluid, that it is based on subjective experience, and that God approves of biological males using restrooms and showers with females, and vice versa.

34. The Churches' desired conduct will, as described more fully below, violate the Act's publication ban, conspiracy ban, and facility use mandate, subjecting them to substantial fines, damages, costs, legal fees, and even imprisonment.

JURISDICTION AND VENUE

35. This action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments, and 42 U.S.C. §§ 1983 *et seq.*

36. This court has jurisdiction over the federal claims under 28 U.S.C. §§ 1331 and 1343.

37. This Court has jurisdiction to award the requested declaratory relief under 28 U.S.C. §§ 2201-02 and Federal Rule of Civil Procedure 57.

38. This Court has jurisdiction to award the requested injunctive relief under 28 U.S.C. § 1343 and Federal Rule of Civil Procedure 65.

39. This Court has jurisdiction to award reasonable costs and attorneys' fees under 42 U.S.C. § 1988.

40. Venue is proper in this district under 28 U.S.C. § 1391(b) because the Defendants reside in this district and/or the acts described in this Complaint occurred in this district.

PLAINTIFFS

41. Horizon Christian Fellowship is a nonprofit corporation organized under Massachusetts law with its principal place of ministry in Fitchburg, MA.

42. Plaintiff George Small is the pastor of Horizon Christian and sues in his individual capacity.

43. Plaintiff Swansea Abundant Life Assembly of God is a nonprofit religious corporation organized under Massachusetts law with its principal place of ministry in Swansea, MA.

44. Plaintiff David Aucoin is the pastor of Abundant Life and sues in his individual capacity.

45. Plaintiff House of Destiny Ministries/Iglesia Casa de Destino is a nonprofit corporation organized under Massachusetts law with its principal place of ministry in Southbridge, MA.

46. Plaintiff Esteban Carrasco is the pastor of Destiny and sues in his individual capacity.

47. Faith Christian Fellowship of Haverhill is a nonprofit corporation organized under Massachusetts law with its principal place of ministry in Haverhill, MA.

48. Plaintiff Marlene Yeo is the pastor of Faith Christian and sues in her individual capacity.

DEFENDANTS

49. Defendants Jamie R. Williamson, Sunila T. George, and Charlotte G. Richie are Commissioners of the Massachusetts Commission Against Discrimination (“MCAD”).

Defendants are sued in their official capacities only.

50. In their official capacities with MCAD, Defendants are responsible for receiving, investigating, initiating, and enforcing complaints, alleging violations of the statute challenged in this case, and for interpreting the statute challenged in this case. *See* Mass. Gen. Laws ch. 151B § 3.

51. Defendant Maura Healey is the Attorney General of the State of Massachusetts and is sued in her official capacity only. Defendant Healey has the express power under state law to initiate complaints under the statute challenged in this case. *See* Mass. Gen. Laws ch. 151B §5.

STATEMENT OF FACTS

Plaintiff Horizon Christian Fellowship

52. Horizon's mission is "to see Christ glorified in our lives, church, and community as we allow Him to use us to reach the world around us." Horizon's community is warmly invited to all the Church's services, activities and events.

53. The Church holds two worship services and a prayer service on Sundays, and a mid-week service and activities for all ages on Wednesday evenings.

54. The Church holds concerts throughout the year, serves an annual Thanksgiving meal to the homeless, and hosts a Harvest Fest for the community on October 31.

55. The Church also operates an alcohol and chemical addiction recovery ministry for the community out of the church building and that it promotes on the radio.

56. The Church owns and operates 11 radio stations heard in Massachusetts and parts of New Hampshire and Rhode Island. The programming consists of live and recorded teaching by Pastor Small and clergy from other churches, contemporary religious music, and a national talk program of ministers discussing current events. Pastor Small and the other clergy address a variety of religious topics, including their understanding of the biblical teaching on human sexuality.

57. The Church has sex-specific, multi-user restrooms for each sex off the sanctuary, and sex-specific, multi-user restrooms for children only near the children's ministry-area.

Plaintiff Swansea Abundant Life Assembly of God

58. Abundant Life is affiliated with the Assemblies of God denomination and is located in Swansea, MA.

59. Abundant Life's mission is to enfold members of its community into the life of the church by believing in, belonging to, and becoming followers of Christ Jesus.

60. The Church offers weekly religious ministries, worship services, and other events and activities to members and the general public.

61. It publicizes its weekly worship services, activities, and events on its public website page, Facebook page, reader board, and through other means.

62. Abundant Life invites the public to participate in its regular worship services, Bible studies, youth activities, events, and other religious programming. On Sundays, it holds a worship service, and provides Sunday school for all ages, and a mid-week Bible study.

63. The Church sponsors various activities throughout the year to which the general public is invited on its public Facebook page: concerts, special dinners, movies, the Fall Harvest/Halloween Festival, Christmas festival and banquet, a July 4th celebration, and other special events. It also sponsors a regular men's breakfast, marriage seminars, and activities, and makes its facility available for weddings and funerals. Specifically, the Church hosts a spaghetti supper periodically for members and the public, and plans to do so again.

64. Abundant Life has two multi-user restrooms, one for men and one for women, and a single-user restroom in the children's area and in the office area for authorized personnel.

Plaintiff House of Destiny Ministries

65. Destiny is a rapidly-growing, ethnically diverse congregation serving the community of Southbridge, MA and conducts its services in English and Spanish.

66. Destiny's religious mission is to impact its community by sharing the love and grace of God thorough Jesus Christ, and to be a blessing to its community.

67. Destiny offers religious ministries, services, and other events and activities to the general public.

68. Destiny publicizes its weekly worship services, religious ministries, and other events and activities on its public Facebook page, and by other means.

69. On Sundays, Destiny offers a worship service, alternating in English and Spanish, and Sunday school for all ages. During the week, it hosts a prayer service, and other special events for youth, men's groups, and seniors.

70. Consistent with the church's mission to demonstrate God's love and compassion and to be a blessing to its community, Destiny opens its facility regularly to the public for weddings, funerals, and community activities, such as serving meals to the homeless at Thanksgiving, hosting concerts, and sponsoring a food pantry for the hungry.

71. Each Christmas the community is invited for a special event, during which a meal and gifts are provided to all who attend.

72. In August of each year, the children of the community are invited to a "back to school night" during which children play games, food is served, and they are given needed school supplies.

73. Quarterly, Destiny offers a "Life Skills Workshop" to the public where it addresses such topics as anger management and conflict resolution from a biblical perspective.

74. Destiny is currently leasing its building, which consists of a sanctuary, Sunday school space, offices and single-sex restrooms, one for biological males and the other for biological females.

75. It has purchased a lot in Southbridge on which it plans to build a new facility consisting of a sanctuary, a gymnasium, Sunday school rooms, and offices. There will be four multi-occupancy restrooms, two for males and two for females, and a multi-occupancy shower room for each sex.

76. Destiny is currently fundraising for the new structure and expects to begin construction next year.

Plaintiff Faith Christian Fellowship of Haverhill

77. Faith Christian is a non-denominational church and its congregation's mission is "to demonstrate the love and power of Christ through salvation, healing and deliverance ... and "for everyone in the city of Haverhill to experience the presence of God and to see a tangible expression of Jesus Christ in their lives today."

78. The Church serves a diverse, low income community and is especially focused on serving the elderly, homeless and at-risk youth. The Church invites the Haverhill community to all of its weekly services, activities and events. On Sundays, it holds a worship service and on Wednesdays a discipleship course for new Christians. On Fridays, the Church offers a service, refreshments, and neighborhood basketball outreach for middle and high school aged youth from the community. On Saturday evenings, it holds a worship service with signing for the deaf.

79. Faith Christian has a food pantry that serves over 300 households a month.

80. It is also actively engaged in a number of other important community service activities. The Church hosts the Violence Prevention Coalition "Peace Banquet," the local police department neighborhood meeting and cook out, the Mt. Washington Alliance dinner-neighborhood outreach, the neighborhood crime watch outreach, and Merrimack Valley Holy Family Hospital Neighborhood outreach.

81. Faith Christian also supports the faith-based social service program, Somebody Cares New England, hosting in its building a number of activities designed to alleviate hunger and homelessness as well as advocate for children, youth and the elderly. Pastor Yeo is the director of Somebody Cares New England.

82. Faith Christian has a single-sex restroom for each biological sex.

Plaintiffs' Beliefs about Biological Sex and Use of their Changing Rooms and Restrooms

83. The Churches and Pastors Small, Aucoin, Carrasco, and Yeo believe that biological sex is an immutable trait from which, among other things, spring the natural and healthy desire for physical privacy and modesty in conditions of partial or full undress, including in showers, restrooms and other private spaces.

84. The Churches and Pastors affirm the goodness of God's design in creating only two sexes, and believe that they are called to help every person embrace his or her distinct, but complementary, maleness and femaleness.

85. The Churches and Pastors believe that one's biological sex was determined by God at conception.

86. The Churches and Pastors believe that God intentionally and purposefully created males *male* and females *female*, and that these two complementary halves of humanity reflect God's design and plan for humanity.

87. The Churches and Pastors believe that "sex" is one's biological sex, which is determined by such things as biology, chromosomes, physiology, and anatomy.

88. These biblically-based beliefs inform the Churches' operations in everything from pulpit ministry, to discipleship, to marriage counseling, to the use of sex-specific showers, restrooms, and changing facilities.

89. The Churches and Pastors believe that it would violate God's created order and command to treat biological males as any other sex than male, and to treat biological females as any other sex than female.

90. The Churches believe that it would violate God's created order and commands to permit their sex-specific changing rooms, showers, and other sensitive areas to be used by members of the opposite biological sex.

91. The Churches have always maintained an unwritten policy and practice that sex-specific private spaces—including changing rooms and restrooms—may be used only by members of the designated biological sex.

92. The Churches' policies and practices regarding access to their changing rooms and restrooms flow logically and directly from their religious beliefs concerning God's design for biological sex and the desire to use their facilities in a manner consistent with their religious beliefs.

93. The Churches want to continue to enforce these facility policies and practices at all times.

94. To force the Churches to permit biological males to access female changing rooms and restrooms or to allow biological females to access male changing areas and restrooms would violate and distort the Churches' religious beliefs and teaching on the subject of sex.

95. Until recently, the Churches did not consider it necessary to make public their changing room and restroom policies because the Churches believed they were free to establish their own facility standards.

96. But given the increased attention on the issue of access to sex-specific areas like changing rooms and restrooms based on gender identity, and not biological sex, in the media and

by government officials, including the Massachusetts Legislature, MCAD, and the Attorney General, Abundant Life and Destiny adopted written policies to clearly set forth their religious beliefs and practices regarding biological sex and the use of their restrooms and showers. The policies are attached as Exhibits A and B.

97. The two churches want to not only present a consistent public message regarding their beliefs about human sexuality, but they also want to disseminate their policies to avoid any embarrassing or awkward situations for those who do not identify with their biological sex and for their own church members.

98. Abundant Life and Destiny want to publicize and distribute their restroom and shower policies on their church websites, Facebook pages, as an insert in their weekly Sunday morning bulletin, and via other means to church members, visitors, and anyone else using the churches' buildings. Faith Christian and Horizon also want to clearly state and implement their changing and restroom policies.

99. Horizon operates 13 radio stations delivering religious programming, including teaching and live talk and interviews on current issues, such as human sexuality. Horizon's Sunday services are carried live on the radio. Horizon wants to continue its religious programming, but fears that if its activities are subject to the Act, its religious content regarding human sexuality carried on radio may violate the Act.

100. While the Churches reject MCAD's interpretation that they are subject to the Act, the Churches have refrained from publicizing and distributing their beliefs, out of the reasonable fear that they would be subject to enforcement proceedings. If not for the Act, the Churches would publicize and disseminate their policies and beliefs in the ways specified above.

The Churches' Religious Beliefs Concerning the Use of their Buildings

101. Every event that occurs in the Churches' facilities is part of the exercise of their religious beliefs and also an expression of their message about God and His plan for humanity.

102. The Churches do not allow use of their facilities for any event or use that is not a part of the exercise of their religious beliefs and consistent with their beliefs about God and His plan for humanity.

103. The Churches' facilities are integral to their ministries. Each room in their facilities serves a direct ministry purpose. Communal worship takes place in their sanctuaries, religious instruction in the Sunday school rooms, Christian fellowship and youth group meetings in the fellowship halls, and spiritual counseling in the pastors' offices.

104. Religious art adorns the walls throughout their buildings, large crosses dominate the front of the sanctuaries, and biblical references are prominent in their narthexes and entry ways.

105. The Churches have consecrated their buildings solely for religious purposes. Their use of their buildings is inseparable from their religious teachings.

106. It would violate the Churches' religious beliefs to allow their facilities to be used in ways that are inconsistent with or violate their religious beliefs.

The Act, MCAD, and the Attorney General

107. Massachusetts public accommodations law prohibits a person from discriminating in three principal ways: 1) making "any distinction, discrimination or restriction on account of" a protected class relative to the "admission of the person, or treatment in any place of public accommodation," Mass. Gen. Laws ch. § 98 ("facility use mandate"); 2) "directly or indirectly ... publish, issue, circulate, distribute or display ... in any way, any advertisement ... book, pamphlet, written or painted or printed notice or sign, of any kind or description, intended to discriminate

against or actually discriminating against persons” based on a protected class in a place of public accommodation, Mass. Gen. Laws ch. § 92A (“publication ban”); and 3) “aid[ing] or incit[ing]” the violation of the facility use mandate or “aid[ing] in or incit[ing] ... in whole or in part” a violation of the publication ban, Mass. Gen. Laws ch. §§ 98, 92A (collectively, “conspiracy ban”).

108. The Act is to be construed broadly to effectuate its purposes. *See Joyce v. Town of Dennis*, 705 F.Supp.2d 74, 83 (D. Mass. 2010).

109. The Act broadly defines “public accommodation” as “any place ... which is open to and accepts or solicits the patronage of the general public....” Mass. Gen. Laws ch. § 92A.

110. It goes on to state that “without limiting the generality of the definition,” the following are examples of public accommodations: “an auditorium, theatre, music hall, meeting place or hall.”

111. “Public accommodation” is to be “construed liberally and inclusively.” Mass. Gen. Laws ch. § 92A.

112. The public accommodation law does not include a religious institution exemption, despite the inclusion of such exemptions in the nondiscrimination provisions relating to employment and education. *See, e.g.*, Mass. Gen. Laws ch. 151B § 4(18).

113. While the Churches contend the First Amendment prevents Massachusetts from subjecting houses of worship to the public accommodation laws, the Act is so broadly written that it encompasses the Churches’ services, events, activities, and other religious programming open to the public and imposes on them the facility use mandate, the publication ban, and conspiracy prohibition.

114. MCAD is empowered to interpret, administer, and enforce the Act. *See* Mass. Gen. Laws ch. 151B §3.

115. MCAD's guidelines and regulations are given substantial deference by the courts. *See Dahill v. Police Dept. of Boston*, 748 N.E.2d 956, 961 (Mass. 2001).

116. The Attorney General, and any aggrieved party, are also empowered to bring enforcement actions. *See* Mass. Gen. Laws ch. 151B §3.

117. The Act provides for substantial penalties, including monetary fines and jail of up to 30 days for a single violation of the publication ban or inciting or aiding in the violation of the publication ban, and a year in jail for violating the facility use mandate or inciting or aiding in the violation of the facility use mandate. *See* Mass. Gen. Laws ch. §§ 92A, 98.

118. Additionally, after an investigation and hearing, MCAD can award \$10,000 for the first offence, \$25,000 for the second and \$50,000 for the third. *See* Mass. Gen. Laws ch.151B § 5.

119. MCAD or the aggrieved party can enforce an order in civil court and obtain an injunction, actual damages, and attorneys' fees. *See* Mass. Gen. Laws ch.151B §§ 6-7.

120. "Persons," including entities and individuals, violating the facility use mandate, publication ban, or conspiracy ban are subject to the severe sanctions of the Act.

121. In S.B. 2407, the Legislature directed MCAD and the Attorney General to issue guidance or regulations by September 1, 2016 to effectuate the law. MCAD issued its nine-page, "Gender Identity Guidance," and stated that the new gender identity law applied to a church "if it holds a secular event, such as a spaghetti supper, that is open to the general public."

122. MCAD failed to provide an exemption for religious institutions, nor did it attempt to define the "secular activities" that it believed might subject a church to the Act, other than the woefully inadequate and confusing "spaghetti supper" test.

123. Indeed, MCAD stated that it would not provide an objective standard, but would review a charge “involving religious institutions or religious exemptions... on a case-by-case-basis.”⁴

124. MCAD did not define “religious institutions” or “religious exemptions,” nor does the Act.

125. Thus, a pastor, other church leader, or a court must guess as to which of the church’s activities subject it to the severe sanctions of the Act.

126. The Attorney General issued its guidance document and on its website states without qualification that “houses of worship” are public accommodations.⁵

127. The facility use mandate requires public accommodations to, among other things, open locker rooms, showers, restrooms, changing areas, and other sensitive areas based on one’s gender identity, rather than biological sex. Mass. Gen. Laws ch. § 92A.

128. If an individual wanted to use the sex-specific facility of the opposite biological sex, the Churches would inquire and question that individual and prevent the individual from entering the opposite sex facility.

129. The publication ban prohibits persons from making written statements intended to discriminate, or which actually discriminate, against protected persons in the full enjoyment of the public accommodation. *See* Mass. Gen. Laws ch. 272 § 92A.

130. The publication ban prohibits the Churches and the Pastors from making public statements, including of a religious character, that could be viewed as indicating that persons who

⁴ *See* <http://www.mass.gov/mcad/docs/gender-identity-guidance.pdf>, p. 4, n.13, *last visited* October 10, 2016.

⁵ *See* <http://www.mass.gov/ago/docs/policy/2016/ag-healey-gender-identity-guidance-for-public-accommodations-9-1-16.pdf>, *last visited* October 10, 2016.

do not identify with their biological sex may be discouraged from accessing the Churches' sex-specific restrooms and showers before, during, or after the Churches' religious services, activities, and events to which the public is invited.

131. The conspiracy ban prohibits any person from aiding or inciting a public accommodation to violate the facility use mandate and publication ban.

132. The conspiracy ban prohibits the Churches and the Pastors from making oral or written statements of a religious character that could be viewed as supporting the policies of public accommodations to limit access to showers, restrooms, changing rooms and other private places based on biological sex, or from opposing policies which allow such access.

133. The publication ban and conspiracy ban chill the Churches' and Pastors' religious speech.

134. The Churches want to communicate in writing and orally to their members and the public their religious beliefs regarding human sexuality and their facility use policies regarding access to their sex-specific showers and restrooms.

135. However, the Churches self-censor their speech out of fear that they will be sanctioned if they express their religious beliefs regarding biological sex during religious services, Bible studies, other religious programming, and at various events and activities held in their buildings. For example, the Churches adopted but did not distribute to members or the public their restroom and shower use policies.

136. The publication and conspiracy ban force the Churches to either violate their deeply-held religious beliefs and self-censor their speech to avoid the Act's sanctions, or adhere to and freely express their religious beliefs and face sanctions.

137. The Pastors frequently speak within and outside their churches to gatherings drawn from the general public. They also are asked to write articles for publications on a variety of religious subjects.

138. The Pastors have spoken and written about their understanding of God's truth concerning the immutability and complementariness of biological sex and they intend to do so in the future in their churches, on the radio, and at other religious meetings held in other churches, meeting halls, auditoriums, and other places MCAD may consider to be public accommodations.

139. For example, the Pastors have stated that sex is fixed and determined by God at birth based on biology and anatomy, that all churches which follow God's Word must ensure that the uses of their buildings are consistent with that teaching, and that society's laws and practices should reflect biblical human sexuality, even if the government disagrees and insists that sex turns on one's gender identity.

140. However, the Pastors reasonably fear that such oral and written statements critical of the government's view regarding gender identity made in or in association with public accommodations subjects them to the publication and conspiracy bans and have stopped making these statements as a result. If not for the Act, the Pastors would immediately begin to make these statements again.

141. MCAD and the Attorney General have not disavowed enforcement of the facility use mandate, publication ban, and conspiracy ban against churches and pastors, and in fact have affirmatively stated that the Act applies to churches, and the Act is written broadly enough to cover such speech and exercise by the Churches and Pastors.

142. By forcing the Churches and Pastors to self-censor their speech and violate their religious beliefs, the Churches and Pastors suffer and will continue to suffer irreparable harm to their constitutional liberties for which there is no adequate remedy at law.

143. The Churches and Pastors are left with no choice other than to file this action, seek declaratory and injunctive relief, and challenge as unconstitutional the following provisions of the Act as applied to them: Massachusetts General Laws §§ 92A and 98.

FIRST CAUSE OF ACTION
Violation of the Religion Clauses
of the First Amendment to the United States Constitution

144. Plaintiffs reallege all matters set forth in paragraphs 1-143 and incorporate them herein.

145. The Act as-applied violates the Churches' rights under the Religion Clauses of the First Amendment to the United States Constitution.

146. The Free Exercise and the Establishment Clauses of the First Amendment together invest in churches the power to order their own affairs, including to decide for themselves, free from state interference, matters of church government, faith, doctrine, the communication of that doctrine, and operation of their own institutions.

147. This freedom extends to the Churches' and Pastors' use, direction, and control of their own houses of worship and their speech and exercise outside of the four walls of the Churches.

148. The Churches' leaders determined that the use of church changing facilities, showers, and restrooms must be consistent with their religious beliefs concerning sex and conditioned access to those areas of its facilities on biological sex, not on gender identity.

149. MCAD's interpretation that the Act will be applied to churches on a "case-by-case-basis" invests in itself the power to decide which religious beliefs, practices, and doctrines of the Churches regarding sex are acceptable, and which ones are not.

150. The Act directly and substantially interferes with the Churches' First Amendment right to order their own internal affairs in matters involving church government, faith, doctrine, the communication of that doctrine, and the operation of their own institution and violates the First Amendment, and entangles the government in the internal affairs of the Churches.

151. The Act is not neutral or generally applicable because it allows MCAD to make individualized assessments as to its application and MCAD has admitted in its interpretive guidance document that it intends to apply the law to religious institutions on a case-by-case-basis.⁶

152. The Act substantially burdens the Churches' and Pastors' exercise of their religious beliefs.

153. Laws that are not neutral or generally applicable must be justified by a compelling governmental interest that is advanced in the least restrictive means available.

154. The Act is subject to strict scrutiny because it implicates more constitutional rights than just the Free Exercise rights of the Churches.

155. The Act may not infringe on the Churches' rights under the Religion Clauses of the First Amendment, absent a compelling governmental interest.

156. The government has no compelling government interest that would justify infringing upon the Churches' and Pastors' free exercise and antiestablishment rights by interfering with matters of internal governance.

⁶ See <http://www.mass.gov/mcad/docs/gender-identity-guidance.pdf>, p. 4, n.13, last visited October 10, 2016.

157. Any interest the government does possess in infringing the Churches' and Pastors' free exercise and antiestablishment rights is not advanced in the least restrictive means available.

158. The Defendants have violated the Churches' and Pastors' rights under the Free Exercise and Establishment Clauses.

SECOND CAUSE OF ACTION
Violation of the Due Process Clause
of the Fourteenth Amendment to the United States Constitution

159. Plaintiffs reallege all matters set forth in paragraphs 1-143 and incorporate them herein.

160. The Fourteenth Amendment to the United States Constitution guarantees the Churches and Pastors due process of law.

161. The Fourteenth Amendment prohibits Defendants from censoring speech or penalizing behavior based on vague standards.

162. Laws that interfere with First Amendment freedoms require a high level of specificity.

163. The Act's definition of public accommodations is broad and vague: "any place ... which is open to and accepts or solicits the patronage of the general public...." *See* Mass. Gen. Laws ch. 272 § 92A.

164. The Act goes on to state that "without limiting the generality of the definition," the following are examples of public accommodations: "an auditorium, theatre, music hall, meeting place or hall."

165. Though the Legislature charged MCAD with adopting regulations and guidelines to interpret and enforce the Act, instead of providing an objective standard to determine when a

church or other religious institution is exempt, MCAD promulgated impossibly vague “secular event” and “spaghetti supper” language, and adopted a subjective, “case-by-case” approach to determine under what circumstances a church would come within the meaning of a public accommodation and be subject to the severe sanctions of the Act.

166. Additionally, the publication ban states it is unlawful to “directly or indirectly ... publish, issue, circulate, distribute or display ... in any way, any advertisement ... of any kind or description, intended to discriminate against or actually discriminating against persons of any ... gender identity.” Mass. Gen. Laws ch. § 92A.

167. The Act and Commission fail to define the vague terms “directly or indirectly” or “intended to discriminate” in the context of a church, nor does the surrounding statute offer a narrowing context for these terms.

168. For example, the Churches have no way of knowing or determining whether the language that they would like to place near shower room and restroom doors and include in the worship bulletin—regarding who may use the women’s restroom and who may use the men’s restroom—will violate the Act.

169. As a result, neither the Plaintiffs nor anyone else can know what statements might qualify as “indirect[] advertis[ing],” or might be “intended to discriminate.”

170. Additionally, the conspiracy ban is vague.

171. The Churches and Pastors are left to guess which speech and conduct may constitute “aid[ing] or incit[ing]” the violation of the facility use mandate or “aid[ing] in or incit[ing] ... in whole or in part” a violation of the publication ban. *See* Mass. Gen. Laws ch. 272 § 98, § 92A.

172. For example, if the Pastors are invited to speak at a public forum and they teach about their understanding of God's plan for human sexuality, and urge attendees to adopt facility use policies consistent with that teaching, the Pastors fear that based on the language of the Law they will have violated the conspiracy ban.

173. The Churches and the Pastors are left to guess what expression and conduct MCAD and the courts may determine violate the Act, and so may differ in their understanding as to what constitutes "a secular event" or activity, what it means to "indirectly ... advertise," or "intend[] to discriminate," and what speech and conduct may constitute "aid[ing] or incit[ing]" the violation of the facility use mandate or the publication ban.

174. The definition of public accommodation, MCAD's interpretation of it, the publication ban, and the conspiracy ban are vague as applied to the Churches and Pastors.

175. In addition to MCAD and the Attorney General, any person claiming to be aggrieved by the Churches' or Pastors' actions can file a complaint.

176. As a result, Plaintiffs fear that, even if MCAD or the Attorney General would not independently initiate an enforcement proceeding against them, someone attending one of their services, activities, or speeches may do so.

177. In such a situation, even if MCAD ultimately determined that the Plaintiffs' sermons and bulletin text, or statements regarding human sexuality conveyed through other means, had not violated the Act, the Plaintiffs would still be forced to expend scarce resources to defend themselves.

178. The Act's definition of public accommodation, MCAD's interpretation of the definition of public accommodation, the publication ban, and the conspiracy ban are vague as

applied to the Churches and the Pastors, and as such constitute violations of the Due Process Clause of the Fourteenth Amendment.

THIRD CAUSE OF ACTION
Violation of the Right to Expressive Association
of the First Amendment to the United States Constitution

179. Plaintiffs reallege all matters set forth in paragraphs 1-143 and incorporate them herein.

180. The Churches and Pastors engage in extensive expressive activity as religious congregations; in fact, all of the Churches' services and other religious programming involve forms of religious expression.

181. The Churches and Pastors believe they must regularly gather congregants and members of the public in communal prayer, worship, fellowship, discussion, mutual encouragement, and other religious speech and for other religious purposes.

182. The Churches and Pastors have a strong theological interest to engage in communal expression concerning their biblical understanding regarding human sexuality.

183. The Churches and Pastors only use their facilities in ways that further their religious beliefs and communicate their religious message, and do not use their facilities in ways that violate those beliefs.

184. Forcing the Churches to open their changing rooms and restrooms to persons of the opposite sex would substantially burden the Churches' and Pastors' right to associate for the purpose of expressing their religious beliefs regarding human sexuality.

185. The government has no compelling interest—unrelated to the suppression of ideas—that is served by infringing the Churches' and Pastors' expressive associational rights, nor can any such interest be achieved by the least restrictive means available.

186. Accordingly, the Churches' and Pastors' First Amendment right to expressive association prohibits the government from imposing the facility use mandate and the publication and conspiracy bans on the Churches and Pastors.

**FOURTH CAUSE OF ACTION
Violation of the Free Speech Clause
of the First Amendment to the United States Constitution**

187. Plaintiffs reallege all matters set forth in paragraphs 1-143 and incorporate them herein.

188. The Act as-applied is an unconstitutional abridgment of the Churches' and Pastors' free speech because it: 1) is a content-based speech restriction; 2) is a viewpoint-based restriction on speech; 3) is overbroad; 4) compels the Churches and Pastors to speak a message that violates their religious beliefs; and 5) forces the Churches and Pastors to engage in self-censorship.

189. Religious speech is fully protected by the First Amendment.

190. The Churches and Pastors engage in religious speech in every aspect of their ministries, including use of the Churches' facilities.

191. The Churches' and Pastors' religious beliefs are grounded in the biblical doctrine of God's creation of humankind in two distinct and immutable sexes, and that He has revealed His image in the complementariness of both sexes, and not in a single sex.

192. Further, the Churches and Pastors believe this doctrine must be taught from the pulpit during its Sunday worship services, during other religious services, in other public gatherings, and communicated through their public witness.

193. One way the Churches give concrete expression to their religious doctrine is through the manner in which they operate their facilities.

The Act is Content-Based

194. The publication and conspiracy bans draw distinctions based on the idea or message a speaker conveys.

195. MCAD must examine a statement's content to determine whether it is objectionable and so punishable under the Act.

196. The publication and conspiracy bans are content-based speech restrictions.

197. Content-based speech restrictions are presumptively unconstitutional and can survive only if they serve a compelling government interest that is advanced in the least restrictive means available.

198. The government has no compelling government interest that justifies punishing the Churches' and Pastors' protected religious speech.

199. Any interest the government may have in punishing the Churches' and Pastors' protected speech is not advanced in the least restrictive means available.

The Act is Viewpoint-Based

200. The Act permits churches and others to distribute and disseminate religious statements that support or condone policies permitting access to showers and restrooms based on one's gender identity, but punish religious statements that support or condone access to showers and restrooms based solely on one's biological sex.

201. The Act's preference for certain religious statements that favor access to showers and restrooms based on gender identity, while punishing religious statements conditioning access on biological sex, violates the First Amendment's Free Speech Clause, which prohibits viewpoint discrimination.

202. The Act may not punish protected speech on the basis of its viewpoint, absent a compelling governmental interest that is advanced in the least restrictive means available.

203. The government has no compelling government interest to justify punishing the Churches' and Pastors' protected religious speech based on their viewpoint.

204. Any interest the government may have in punishing the Churches' and Pastors' protected speech based on viewpoint is not advanced in the least restrictive means available.

The Act Imposes Over-Broad Restrictions on Speech

205. The Act is unconstitutionally overbroad on its face because it burdens substantially more protected speech than could be justified by any compelling government interest.

206. The government may not achieve its purposes by means which sweep unnecessarily broadly and thereby invade citizens' protected freedoms.

207. The speech of Churches and Pastors regarding biological sex is protected religious speech.

208. There is a realistic danger that MCAD's publication ban applies to thousands of Massachusetts churches and pastors, not before this Court, who hold religious beliefs about sex that are similar to those of the Churches and Pastors.

209. Because the publication and conspiracy bans applied to Massachusetts churches and pastors punish a substantial amount of protected religious speech without constitutional justification, it is an unconstitutional regulation of speech and is facially void.

The Act Violates the Compelled Speech Doctrine

210. Through the threat of sanctions, the Act compels the Churches and Pastors to communicate two distinct government messages: 1) that the Churches' changing areas, showers,

and restrooms must be opened to persons of the opposite biological sex, and 2) that sex is fluid and based on one's subjective experience.

211. The Churches and Pastors object to both messages.

212. They believe that their houses of worship should be operated in a manner consistent with their religious beliefs that God created two immutable and complementary sexes, and that maleness and femaleness are not fluid but based on biology and anatomy that God created with intention and purpose.

213. Government-compelled speech is *per se* unconstitutional.

214. The government lacks a compelling interest to force the Churches and Pastors to communicate its favored messages, nor does the compulsion of speech serve any interest the government may possess in the least restrictive means available.

215. The facility use mandate is invalid as applied to Plaintiffs.

The Act Results in Self-Censored Speech.

216. The Churches and Pastors have refrained from declaring the Bible's teaching regarding God's design of two immutable and complementary sexes in sermons, theological expositions, educational speeches, newsletter, church worship bulletin text, and other public statements from the Churches and the Pastors.

217. The Churches adopted shower and restroom use policies for distribution and dissemination to its members and to the public, but declined to distribute or disseminate them out of a reasonable fear that MCAD and the Attorney General would prosecute them for doing so.

218. The Act's imposition of sanctions on public statements that may be viewed as discriminatory in violation of the publication ban and conspiracy ban, places a direct and substantial burden on the Churches' and Pastors' right of free speech, including their freedom to

teach their religious beliefs regarding God's design for human sexuality and to publicly distribute and implement shower and restroom use policies.

219. The Churches and Pastors are objectively, reasonably chilled from exercising their First Amendment right to free speech due to the risk of MCADs' enforcement of the Act and the substantial penalties, including punishing fines and up to a year in jail.

220. The Churches' and Pastors' free speech rights are violated by the Act on its face, and as applied to the Churches and Pastors.

FIFTH CAUSE OF ACTION
Violation of the Right to Peaceably Assemble
of the First Amendment to the United States Constitution

221. Plaintiffs reallege all matters set forth in paragraphs 1-143 and incorporate them herein.

222. The Act violates the Churches' constitutional right to peaceably assemble as the Churches are subject to the publication ban and facility use mandate because they make their services and other religious programming open to the public, thus forcing the Churches to either violate their deeply held religious beliefs and exclude nonmembers from their religious services and programming to avoid the application of the Act, or adhere to and freely express their religious beliefs to all who wish to attend their services and ministry activities and face substantial sanctions.

223. The Act violates the Churches' right to assemble with like-minded or other interested individuals and the government has no compelling interest to interfere with such right.

224. Any interest the government has in interfering with the Churches' First Amendment right is not advanced in the least restrictive means available.

225. The Defendants have violated the Churches' right under the First Amendment to freely assemble.

PRAYER FOR RELIEF

Plaintiffs ask the Court to enter judgment against Defendants as follows:

1. That this Court enter a temporary restraining order and a preliminary and permanent injunction restraining all Defendants, their officers, agents, employees, and all other persons acting in concert with them, from enforcing or applying Massachusetts General Laws chapter 272 sections 92A and 98 against the Plaintiffs;
2. That this Court enter a declaratory judgment declaring that Massachusetts General Laws chapter 272 sections 92A and 98, as applied to Churches and Pastors, violates the First and Fourteenth Amendments of the U.S. Constitution as-applied;
3. That this Court issue the requested injunctive relief without a condition of bond or other security being required of Plaintiffs;
4. That this Court award Plaintiffs' costs and expenses, including their attorneys' fees, pursuant to 42 U.S.C. § 1988; and
5. For such other relief as the Court deems just and equitable.

Verification

I, David Aucoin on behalf of Abundant Life Church, and myself, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct.

Executed this ____ day of October, 2016.


David Aucoin, Pastor

I, Esteban Carrasco, on behalf of House of Destiny and myself, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct.

Executed this ____ day of October, 2016.

Esteban Carrasco, Pastor

I, Marlene Yeo, on behalf of Community Christian Fellowship-Haverhill and myself, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct.

Executed this ____ day of October, 2016.

Marlene Yeo, Pastor

I, George Small, on behalf of Horizon Christian Fellowship and myself, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct.

Executed this ____ day of October, 2016.

George Small, Pastor

DATED: This 10th day of October, 2016.

Verification

I, David Aucoin on behalf of Abundant Life Church, and myself, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct.

Executed this ___ day of October, 2016.

David Aucoin, Pastor

I, Esteban Carrasco, on behalf of House of Destiny and myself, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct.

Executed this 10 day of October, 2016.



Esteban Carrasco, Pastor

I, Marlene Yeo, on behalf of Community Christian Fellowship-Haverhill and myself, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct.

Executed this ___ day of October, 2016.

Marlene Yeo, Pastor

I, George Small, on behalf of Horizon Christian Fellowship and myself, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct.

Executed this ___ day of October, 2016.

George Small, Pastor

DATED: This 10th day of October, 2016.

Verification

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Executed this ____ day of October, 2016.

David Aucoin, Pastor

I, Esteban Carrasco, on behalf of House of Destiny and myself, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct.

Executed this ____ day of October, 2016.

Esteban Carrasco, Pastor

I, Marlene Yeo, on behalf of Community Christian Fellowship-Haverhill and myself, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct.

Executed this ____ day of October, 2016.

Marlene Yeo, Pastor

I, George Small, on behalf of Horizon Christian Fellowship and myself, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct.

Executed this 10 day of October, 2016.



George Small, Pastor

DATED: This 10th day of October, 2016.

Verification

I, David Aucoin on behalf of Abundant Life Church, and myself, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct.

Executed this ___ day of October, 2016.

David Aucoin, Pastor

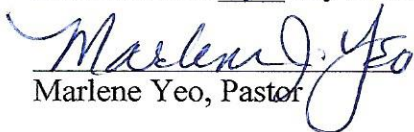
I, Esteban Carrasco, on behalf of House of Destiny and myself, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct.

Executed this ___ day of October, 2016.

Esteban Carrasco, Pastor

I, Marlene Yeo, on behalf of Community Christian Fellowship-Haverhill and myself, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct.

Executed this 9 day of October, 2016.



Marlene Yeo, Pastor

I, George Small, on behalf of Horizon Christian Fellowship and myself, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct.

Executed this ___ day of October, 2016.

George Small, Pastor

DATED: This 10th day of October, 2016.

DATED: This 10th day of October, 2016.

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/s

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**Pro hac vice application to follow*

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